

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2009 JUL 23 AM 10:47  
OFFICE OF THE CLERK

WOODY PAIGE,

Plaintiff,

v.

BRYANLGH MEDICAL CENTER,

Defendant.

4:08CV3108

**FINAL JURY  
INSTRUCTIONS**

## **INSTRUCTION NO. 1**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

## **INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

### **INSTRUCTION NO. 3**

You are reminded that you are not to engage in any independent investigation of this case. For instance, do not conduct research on the Internet about this case or about anyone involved with it, and do not consult a dictionary.

#### **INSTRUCTION NO. 4**

This case should be considered and decided by you as an action between parties of equal standing in the community, of equal worth, and holding the same or similar stations in life. All parties stand equal before the law and are to be dealt with as equals in a court of justice.

## **INSTRUCTION NO. 5**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence.

The greater weight of the evidence means evidence sufficient to make a claim more likely true than not. A greater weight of the evidence does not necessarily mean a greater number of witnesses or exhibits.

A party is entitled to the benefit of any evidence tending to establish that party's contention even though such evidence was introduced by another. If the evidence upon a claim is evenly balanced or if it weighs in favor of the other party, then the burden of proof has not been met.

## **INSTRUCTION NO. 6**

The plaintiff and the defendant have stipulated—that is, they have agreed—that certain facts are uncontroverted. You should, therefore, treat these facts as having been proved:

1. Woody Paige, the plaintiff, is a resident of Lincoln, Nebraska.
2. BryanLGH Medical Center, the defendant, is a non-profit corporation which operates a hospital in Lincoln, Nebraska. It was formed through the merger of Bryan Memorial Hospital and Lincoln General Hospital.
3. The plaintiff is African-American.
4. The plaintiff was hired by Bryan Memorial Hospital in September 1988 as a Surgical Tech and was a Surgical Tech on the Heart Team in the Operating Room at the time of his termination.
5. The plaintiff was terminated as an employee of BryanLGH Medical Center effective March 1, 2007.
6. During the period from December 2006 through February 2007, the plaintiff's direct supervisor was Julie Smith, R.N., who was the Surgery Manager of the Heart Team. Smith's immediate supervisor was Charles Meyer, R.N., who was the Director of Surgery Operations, and his supervisor was Larry Elliott, who was the Vice President of Diagnostic and Treatment Services.

## **INSTRUCTION NO. 7**

The plaintiff, Woody Paige, claims that the defendant, BryanLGH Medical Center, discriminated against him on the basis of his race when he was subjected to disciplinary action and terminated. The defendant denies this claim.



## INSTRUCTION NO. 8

Your verdict must be for the plaintiff if all the following elements have been proved by the greater weight of the evidence:

*First*, the defendant made an employment decision which adversely affected the plaintiff; and

*Second*, the plaintiff's race was a motivating factor in the defendant's decision.

If either of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the defendant and you need not proceed further in considering this claim.

## **INSTRUCTION NO. 9**

As used in these instructions, the plaintiff's race was a "motivating factor" if the plaintiff's race played a part in the defendant's decision to discipline or terminate the plaintiff. However, the plaintiff's race need not have been the only reason for the defendant's decision.

## INSTRUCTION NO. 10

If you find in favor of the plaintiff under Instruction No. 8, then you must award the plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate the plaintiff for any actual damages you find the plaintiff sustained as a direct result of the defendant's adverse employment decision.

Actual damages include any wages or fringe benefits you find the plaintiff would have earned in his employment with BryanLGH Medical Center if he had not been discharged on March 1, 2007, through the date of your verdict, minus the amount of earnings and benefits from other employment received by the plaintiff during that time. Actual damages also may include any other damages sustained by the plaintiff for emotional pain, suffering and mental anguish. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

You are also instructed that the plaintiff has a duty under the law to "mitigate" his damages—that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find by the greater weight of the evidence that the plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity. Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

## **INSTRUCTION NO. 11**

If you find in favor of the plaintiff but you find that his damages have no monetary value, then you must return a verdict for the plaintiff in the nominal amount of \$1.00.

## **INSTRUCTION NO. 12**

You may not return a verdict for the plaintiff just because you might disagree with the defendant's personnel actions or believe them to be harsh or unreasonable. An employer is entitled to make its own subjective personnel decisions for any reason that is not discriminatory.

### **INSTRUCTION NO. 13**

Your verdict must be agreed to by all eight of you, that is, it must be unanimous.

## INSTRUCTION NO. 14

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the courtroom deputy, signed by one or more jurors. You may summon the courtroom deputy by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. The caller should clearly identify himself or herself as a member of the jury so that my staff will react

accordingly. I will respond to your communication as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me, how your votes stand numerically.

If you do not agree on a verdict by 5:00 o'clock p.m., you may separate and return for deliberation at 9:00 o'clock a.m. on the next business day. You may deliberate after 5:00 o'clock p.m., but, if so, please notify my staff in advance by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. Please also notify my chambers staff by telephone whenever you separate during the day or at the end of the day, and advise when you expect to return to the jury room to reconvene your deliberations. If you do separate, then during that time, you are not allowed to discuss this case with anyone, even another juror.

Fourth, your verdict must be based solely on the evidence and law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, complete it pursuant to the instructions on the form, and advise my chambers staff by telephone when you are ready to return to the courtroom to deliver your verdict.

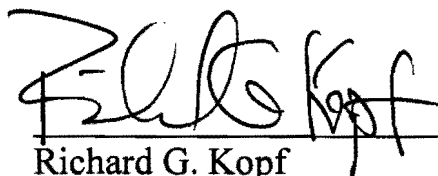


Submitted at 10:26 o'clock a.m. p.m.

R bfe

DATED this 23<sup>rd</sup> day of July, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Richard G. Kopf", written over a horizontal line.

Richard G. Kopf  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WOODY PAIGE,

Plaintiff,

v.

BRYANLGH MEDICAL CENTER,

Defendant.

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**VERDICT FORM**

**COPY**

Please answer the following questions in accordance with the jury instructions and the instructions contained in this form. It is possible that you will answer some but not all questions.

**VERDICT**

**A. Liability**

**Note:** Complete this Part A of the Verdict Form by writing in the name required by your verdict.

On the employment discrimination claim of Plaintiff Woody Paige against Defendant BryanLGH Medical Center, we find in favor of:

\_\_\_\_\_  
[Plaintiff Woody Paige]

or

\_\_\_\_\_  
[Defendant BryanLGH Medical Center]

**B. Damages**

**Note:** Complete this Part B of the Verdict Form only if you have found in favor of Plaintiff on his employment discrimination claim. If your finding is in favor of Defendant, leave the spaces below blank and proceed to Execution of Verdict Form.

**1. Lost Wages and Benefits**

We find Plaintiff's damages for lost wages and benefits through the date of the verdict to be:

\$ \_\_\_\_\_ (stating the amount or, if none, write the word "none").

**2. Other Damages**

We find Plaintiff's other damages, excluding lost wages and benefits, to be:

\$ \_\_\_\_\_ (stating the amount or, if you find that Plaintiff's damages have no monetary value, set forth the nominal amount of \$1.00).

**EXECUTION OF VERDICT FORM**

**Note:** The Foreperson shall sign and date the verdict form, and such signature shall mean that the verdict of the jury was unanimous.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**COPY**

\_\_\_\_\_  
**FOREPERSON**